IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.255 OF 2004
IN
APPEAL FROM ORDER NO.254 OF 2005

Mrs.Lucky Niranjan Kulkarni ...Applicant
vs.
Municipal Corporation of
Greater Mumbai & Ors. ...Respondent

CORAM: A.S.OKA,J.
DATE : APRIL 4,2005.

P.C.:

1. Rule. Respondents waive service. Taken up for hearing forthwith.

2. There is prima face material on record to show that much prior to issuance of notice under Section 354 A of Mumbai Municipal Corporation Act, 1888, the part of the terrace was already covered. Hence, prima facie, on the basis of the notice under Section 354 A, entire terrace which is now covered cannot be ordered to be restored to its original position. Hence, till the final disposal of the Appeal both the parties will maintain status quo in respect of disputed structure. Notwithstanding the order of status quo the Respondent No.1 will be free to initiate action under Section 351 of the said Act of 1888 in respect of the entire disputed structure.

3. It is made clear that if any order is passed under Section 351 of the said Act of 1888 in respect of any portion of the disputed structure, the order of status quo will stand vacated to that extent. It is obvious that the order under Section

351 of the said Act of 1888 will be passed after giving an opportunity to the Appellant of being heard. The pendency of the Appeal from Order will not operate as a stay to the suit.

JUDGE.